

Appl. No. 10/785,464
Docket No. CM2601MC
Amdt. dated August 1, 2006
Reply to Office Action mailed on May 2, 2006
Customer No. 27752

REMARKS

Priority

A certified copy of EPO filing 01120342.9 is being sent by mail separate from this response.

Claim Status

Claims 1-12 are pending in the present application. No additional claims fee is believed to be due.

Claim 8 is amended by deleting “, such as chitosonium pyrrolidone carboxylate and/or chitosonium lactate.” Support for this amendment can be found at page 10, line 28, of the specification.

Rejection Under 35 USC §112, Second Paragraph

Claim 8 was rejected under 35 U.S.C. § 112 Second Paragraph as being indefinite. Claim 8 is amended to be definite, claiming the chitosan material to be at least one salt of chitosan. The Applicants submit that Claim 8 is allowable under 35 U.S.C. § 112 and respectfully request that the rejection be withdrawn.

Rejection Under 35 U.S.C. § 103(a) Over Kelkenberg in view of Kellenberger et al. and Sackmann et al.

Claims 1-12 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Kelkenberg (U.S. Patent No. 5,496,933) in view of Kellenberger et al. (U.S. Patent No. 4,699,823) and Sackmann et al. (U.S. Patent No. 5,635,569). This rejection is traversed for two reasons.

First, the references, when combined, fail to teach or suggest a continuous and homogeneous region of chitosan. In the present application, the structure of the continuous and homogeneous region of chitosan is analogous to the structure of a layer of salt created in the bottom of a glass by allowing a glass of salt water to dry over many days. When a glass of salt water is allowed to dry over many days, the water evaporates from the glass, leaving behind a layer of salt at the bottom of the glass. The layer of salt formed on the bottom of the glass is continuous and homogeneous. Many of the particles

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of salt are linked to adjacent particles of salt. The salt at the bottom of the glass has a structure that is distinct from that of grains of salt, even very small grains of salt, poured into a dry glass to form a layer of salt at the bottom a glass. For grains of salt poured into a dry glass, the grains are finely dispersed. In the present application, as can be seen in Figures 2 and 3, the particles of chitosan are not finely dispersed. Rather the particles of chitosan form a continuous and homogeneous region of chitosan material.

The Office Action cites Figure 3 of Kellenberger et al. as disclosing a continuous and homogeneous region of a superabsorbent. As can be observed in the zoomed in portion of Figure 3 of Kellenberger et al., granules of superabsorbent are illustrated as circles. The granules of superabsorbent in Figure 3 of Kellenberger et al. are spaced apart from one another, with few granules of superabsorbent in contact with adjacent granules of superabsorbent. The granules of superabsorbent in Kellenberger et al. are not a continuous and homogeneous region, as claimed in the present application.

Kelkenberg, Column 2 lines 25-27, describes the chitosan as a powder. Sackmann et al. (Column 4 lines 61-62) also describes the superabsorbent polymer disclosed therein as a powder. Similarly, Kellenberger et al. (Figures 2-6) illustrates the superabsorbent polymer disclosed therein as a powder. The powders of Kelkenberg, Kellenberger et al., and Sackmann et al. are like grains of dry salt poured into a dry glass, as discussed above, and do not form a continuous and homogeneous region like that claimed and shown in Figs. 2 and 3 of the present application. Therefore, the Applicants submit that Claim 1 is allowable over Kelkenberg in view of Kellenberger et al. and Sackmann et al.

Second, the Office Action fails to identify portions of Kelkenberg, Kellenberger et al., and Sackmann et al., that when combined, teach or suggest a chitosan material wherein 1 gram of said chitosan material is soluble in 100 grams of water at 25°C and one atmosphere. The Office Action on Page 6, lines 10-11 states that "it is reasonable to presume that said limitations are inherent to the invention." The Examiner has failed to provide rationale or evidence tending to show inherency, as required by the Manual of Patent Examining Procedure (MPEP) § 2112(IV) (8th Ed. Including May 2004 Revisions). "To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency . . . may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.'" *In re Robertson*, 169 F.3d 743, 745,

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49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999) (citations omitted) (emphasis added). Rather, "[i]n relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original).

The Office Action has failed to provide rationale or evidence that supports the Office Action's statement that the matter set forth in Claim 1 of the present application is "presumed" to be inherent in Kelkenberg. Therefore, the Applicants submit that Claim 1 is patentable over Kelkenberg in view of Kellenberger et al. and Sackmann et al. The Applicants respectfully request that the rejection of Claim 1, under 35 U.S.C. § 103(a), be withdrawn.

Because Claims 2-12 depend upon Claim 1, the Applicants submit that Claims 2-12 are also allowable over Kelkenberg in view of Kellenberger et al. and Sackmann et al. The Applicants respectfully request that the rejections of Claims 2-12 also be withdrawn.

Response to Double Patenting Rejection

U.S. Patent No. 6,833,487 in view of Kellenberger et al. and Sackmann et al.

Claims 1-12 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-15 of U.S. Patent No. 6,833,487 in view of Kellenberger et al. and Sackmann et al. Claim 1 recites a "continuous and homogeneous" region of chitosan "wherein at least 1 gram of said chitosan material is soluble in 100 grams of water at 25°C and one atmosphere." The Applicants submit that Claim 1 is patentable over Claims 1-15 of U.S. Patent No. 6,833,487 in view of Kellenberger et al. and Sackmann et al. because the references, when combined, fail to teach or suggest an absorbent member comprising at least one continuous and homogeneous region of chitosan material wherein at least 1 gram of said chitosan material is soluble in 100 grams of water at 25°C and one atmosphere.

Claims 1-15 of U.S. Patent No. 6,833,487 fail to teach or suggest an absorbent member comprising at least one continuous and homogeneous region of chitosan material wherein at least 1 gram of said chitosan material is soluble in 100 grams of water at 25°C and one atmosphere. Combining the Kellenberger et al. and Sackmann et al. references with Claims 1-15 of U.S. Patent No. 6,833,487 fails to cure the deficiency of Claims 1-15

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of U.S. Patent No. 6,833,487. As discussed above in regard to the rejection under 35 U.S.C. § 103(a), Kellenberger et al. fails to disclose a continuous and homogeneous region of a superabsorbent. The Office Action does not cite any portion of Sackmann et al. that teaches or suggests at least one continuous and homogeneous region of chitosan material wherein at least 1 gram of said chitosan material is soluble in 100 grams of water at 25°C and one atmosphere.

The Applicants submit that Claim 1 is patentable over Claims 1-15 of U.S. Patent No. 6,833,487 in view of Kellenberger et al. and Sackmann et al. The Applicants respectfully request that the double patenting rejection of Claim 1 be withdrawn.

Because Claims 2-12 depend upon Claim 1, the Applicants submit that Claims 2-12 are also allowable over Claims 1-15 of U.S. Patent No. 6,833,487 in view of Kellenberger et al. and Sackmann et al. The Applicants respectfully request that the double patenting rejection of Claims 2-12 be withdrawn.

U.S. Patent No. 6,867,287 in view of Kellenberger et al. and Sackmann et al.

Claims 1-12 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-24 of U.S. Patent No. 6,867,287 in view of Kellenberger et al. and Sackmann et al. Claim 1 recites a "continuous and homogeneous" region of chitosan "wherein at least 1 gram of said chitosan material is soluble in 100 grams of water at 25°C and one atmosphere." The Applicants submit that Claim 1 is patentable over Claims 1-24 of U.S. Patent No. 6,867,287 in view of Kellenberger et al. and Sackmann et al. because the references, when combined, fail to teach or suggest an absorbent member comprising at least one continuous and homogeneous region of chitosan material wherein at least 1 gram of said chitosan material is soluble in 100 grams of water at 25°C and one atmosphere.

Claims 1-24 of U.S. Patent No. 6,867,287 fail to teach or suggest an absorbent member comprising at least one continuous and homogeneous region of chitosan material wherein at least 1 gram of said chitosan material is soluble in 100 grams of water at 25°C and one atmosphere. Combining the Kellenberger et al. and Sackmann et al. references with Claims 1-24 of U.S. Patent No. 6,867,287 fails to cure the deficiency of Claims 1-24 of U.S. Patent No. 6,867,287. As discussed above in regard to the rejection under 35 U.S.C. § 103(a), Kellenberger et al. fails to disclose a continuous and homogeneous

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region of a superabsorbent. The Office Action does not cite any portion of Sackmann et al. that teaches or suggests at least one continuous and homogeneous region of chitosan material wherein at least 1 gram of said chitosan material is soluble in 100 grams of water at 25°C and one atmosphere.

The Applicants submit that Claim 1 is patentable over Claims 1-24 of U.S. Patent No. 6,867,287 in view of Kellenberger et al. and Sackmann et al. and the Applicants respectfully request that the double patenting rejection of Claim 1 be withdrawn.

Because Claims 2-12 depend upon Claim 1, the Applicants submit that Claims 2-12 are also allowable over Claims 1-24 of U.S. Patent No. 6,867,287 in view of Kellenberger et al. and Sackmann et al. The Applicants respectfully request that the double patenting rejection of Claims 2-12 be withdrawn.

U.S. Patent No. 6,887,564 in view of Kellenberger et al. and Sackmann et al.

Claims 1-12 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-21 of U.S. Patent No. 6,887,564 in view of Kellenberger et al. and Sackmann et al. Claim 1 recites a “continuous and homogeneous” region of chitosan “wherein at least 1 gram of said chitosan material is soluble in 100 grams of water at 25°C and one atmosphere.” The Applicants submit that Claim 1 is patentable over Claims 1-21 of U.S. Patent No. 6,887,564 in view of Kellenberger et al. and Sackmann et al. because the references, when combined, fail to teach or suggest an absorbent member comprising at least one continuous and homogeneous region of chitosan material wherein at least 1 gram of said chitosan material is soluble in 100 grams of water at 25°C and one atmosphere.

Claims 1-21 of U.S. Patent No. 6,887,564 fail to teach or suggest an absorbent member comprising at least one continuous and homogeneous region of chitosan material wherein at least 1 gram of said chitosan material is soluble in 100 grams of water at 25°C and one atmosphere. Combining the Kellenberger et al. and Sackmann et al. references with Claims 1-21 of U.S. Patent No. 6,887,564 fails to cure the deficiency of Claims 1-21 of U.S. Patent No. 6,887,564. As discussed above in regard to the rejection under 35 U.S.C. § 103(a), Kellenberger et al. fails to disclose a continuous and homogeneous region of a superabsorbent. The Office Action does not cite any portion of Sackmann et al. that teaches or suggests at least one continuous and homogeneous region of chitosan

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material wherein at least 1 gram of said chitosan material is soluble in 100 grams of water at 25°C and one atmosphere.

The Applicants submit that Claim 1 is patentable over Claims 1-21 of U.S. Patent No. 6,887,564 in view of Kellenberger et al. and Sackmann et al. The Applicants respectfully request that the double patenting rejection of Claim 1 be withdrawn.

Because Claims 2-12 depend upon Claim 1, the Applicants submit that Claims 2-12 are also allowable over Claims 1-21 of U.S. Patent No. 6,887,564 in view of Kellenberger et al. and Sackmann et al. The Applicants respectfully request that the double patenting rejection of Claims 2-12 be withdrawn.

U.S. Patent Application No. 11/021,634 in view of Kellenberger et al. and Sackmann et al.

Claims 1-12 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-20 of copending Application 11/021,634 in view of Kellenberger et al. and Sackmann et al. Claim 1 recites a "continuous and homogeneous" region of chitosan "wherein at least 1 gram of said chitosan material is soluble in 100 grams of water at 25°C and one atmosphere." The Applicants submit that Claim 1 is patentable over Claims 1-20 of copending Application 11/021,634 in view of Kellenberger et al. and Sackmann et al. because the references, when combined, fail to teach or suggest an absorbent member comprising at least one continuous and homogeneous region of chitosan material wherein at least 1 gram of said chitosan material is soluble in 100 grams of water at 25°C and one atmosphere.

Claims 1-20 of copending Application 11/021,634 fail to teach or suggest an absorbent member comprising at least one continuous and homogeneous region of chitosan material wherein at least 1 gram of said chitosan material is soluble in 100 grams of water at 25°C and one atmosphere. Combining the Kellenberger et al. and Sackmann et al. references with Claims 1-20 of copending Application 11/021,634 fails to cure the deficiency of Claims 1-20 of copending Application 11/021,634. As discussed above in regard to the rejection under 35 U.S.C. § 103(a), Kellenberger et al. fails to disclose continuous and homogeneous region of a superabsorbent. The Office Action does not cite any portion of Sackmann et al. that teaches or suggests at least one continuous and

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homogeneous region of chitosan material wherein at least 1 gram of said chitosan material is soluble in 100 grams of water at 25°C and one atmosphere.

The Applicants submit that Claim 1 is patentable over Claims 1-20 of copending Application 11/021,634 in view of Kellenberger et al. and Sackmann et al. The Applicants respectfully request that the double patenting rejection of Claim 1 be withdrawn.

Because Claims 2-12 depend upon Claim 1, the Applicants submit that Claims 2-12 are also allowable over Claims 1-20 of copending Application 11/021,634 in view of Kellenberger et al. and Sackmann et al. The Applicants respectfully request that the double patenting rejection of Claims 2-12 be withdrawn.

Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejections under 35 U.S.C. § 112, 35 U.S.C. § 103(a), and the double patenting rejections. Early and favorable action in the case is respectfully requested.

This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 1-12 are respectfully requested.

Respectfully submitted,

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